

\*\*Original filed 5/1/07\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICKEY LOUIS ALFORD, a.k.a.  
Morris Day,

Plaintiff,

vs.

DR. WINN, et al.,

Defendants.

No. C 06-4442 JF (PR)

ORDER OF DISMISSAL

Plaintiff, a state prisoner and frequent litigant in this Court, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against several psychologists and psychiatrists concerning his mental competency trial in Monterey Superior Court. Plaintiff seeks to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. On October 24, 2006, the Court issued an Order to Show Cause to Plaintiff as to why the instant complaint should not be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). See Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005).

On November 28, 2006, Plaintiff filed a response to the Court's order. In his response, Plaintiff does not address his prior dismissed actions, or dispute that these prior cases, as set forth below, qualify as strikes under 28 U.S.C. 1915(g). Plaintiff alleges that

1 “my life has to be in danger, placed in isolation and confinement . . . racial discrimination  
2 based race.” See Pl.’s Response at 1.

3 The plain language of the imminent danger clause in § 1915(g) indicates that  
4 imminent danger is to be assessed at the time of filing, not at the time of the alleged  
5 constitutional violations. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir.  
6 2001) (en banc) (plaintiff’s allegations of past acts of physical harassment were not  
7 sufficiently specific or related to support an inference of imminent danger); Medberry v.  
8 Butler, 185 F.3d 1189, 1192-93 (11th Cir. 1999) (finding no imminent danger where  
9 plaintiff had been placed in administrative segregation following physical assaults by  
10 fellow inmates and before he filed his complaint); Banos v. O’Guin, 144 F.3d 883, 885  
11 (5th Cir. 1998) (§ 1915(g) applies on appeal at time request to proceed in forma pauperis  
12 is filed). Here, Plaintiff’s allegations do not satisfy the “imminent danger” exception to  
13 1915(g). Plaintiff fails to explain the imminency or severity of any injuries or any  
14 potential danger he faces in isolated confinement. He does not address the applicability  
15 of section 1915(g), and he has not otherwise paid the filing fee for this civil rights action.

16 The Prison Litigation Reform Act of 1995 (“PLRA”), which was enacted on April  
17 26, 1996, provides that a prisoner may not bring a civil action or appeal a civil judgment  
18 under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while  
19 incarcerated or detained in any facility, brought an action or appeal in a court of the  
20 United States that was dismissed on the grounds that it is frivolous, malicious, or fails to  
21 state a claim upon which relief may be granted, unless the prisoner is under imminent  
22 danger of serious physical injury.” 28 U.S.C. § 1915(g).

23 A review of the dismissal orders in Plaintiff’s prior prisoner actions in this Court  
24 reveal that he has had at least three such cases dismissed on the grounds that they were  
25 frivolous, malicious, or failed to state a claim upon which relief may be granted. See Day  
26 v. Feinstein, C 96-1796-FMS (dismissed as frivolous); Alford v. Johnson, C 05-1352 JF  
27 (PR) (dismissed for failure to state a claim); Alford v. Sony Electronic Inc., C 05-1581 JF  
28 (PR) (dismissed for failure to state a claim). In light of these dismissals, and because

1 Plaintiff is not under imminent danger of serious physical injury, the instant civil rights  
2 action is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(g). Plaintiff may  
3 file his claims in a paid complaint in a new civil rights action. The Clerk shall terminate  
4 any pending motions and close the file. No filing fee is due.

5 IT IS SO ORDERED.

6 DATED: 4/30/07

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Rickey Louis Alford  
3 J-39242  
4 CSP - Salinas Valley IV  
5 P.O. Box 1060  
6 Soledad, CA 93960-1060  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28